

## **REMARKS**

Applicant respectfully requests favorable reconsideration of this application in light of the following remarks. By the present amendment Applicant has cancelled claims 12-20 and 23-39 and added new claims 40-52. Claim 40, the only independent claim, finds non-limiting support at least in original claims 1 and 11 and pp. 2-4 of the originally-filed application. No new matter has been added.

### **Election/Restrictions**

Applicant notes that the Examiner has withdrawn claims 36-39 from consideration as being directed to a non-elected invention. Office Action at 3. As Applicant has cancelled claims 36-39 by this amendment, such an election is moot.

### **35 U.S.C. § 102(b) Rejections**

In the Office Action, claims 12, 13, 15-18, and 23-33 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,211,638 to Dudar et al. (hereinafter "Dudar"). As claims 12, 13, 15-18, and 23-33 have been cancelled, this rejection is moot and Applicant respectfully requests withdrawal of the rejection of these claims under 35 U.S.C. § 102(b).

### **35 U.S.C. § 103(a) Rejections**

Claims 14, 34, and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dudar in view of U.S. Patent No. 3,977,555 to Larson (hereinafter "Larson"). Claims 19 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dudar in view of U.S. Patent No. 5,358,501 to Meyer (hereinafter "Meyer"). As claims 14, 19, 20, 34, and 35 have been cancelled, these rejections are moot and Applicant respectfully requests withdrawal of the rejections of these claims under 35 U.S.C. § 103(a).

#### **Independent Claim 40**

To the extent the Examiner believes the noted references to be applicable to independent claim 40, claim 40 recites a fluid transfer device, including, among other things, a piercing mandrel “formed integrally with and extending from the lid portion . . . including a piercing portion . . . including a pointed end and a cylindrical portion of constant diameter, the piercing mandrel further including a conical sealing portion adjoining the cylindrical portion and widening to the lid portion, the conical sealing portion being configured to seal a tear in the elastic stopper formed upon eccentric application of the fluid transfer device to the elastic stopper.”

Dudar does not disclose, teach, or suggest these features of claim 40. In particular, Dudar does not disclose a piercing mandrel “further including a conical sealing portion adjoining the cylindrical portion and widening to the lid portion.” To the contrary, Dudar describes a vial adaptor 736 having a hole 750 centered in a top member 740, which is aligned with a fluid flow member 728. An adapter spike 752 is contiguous with the hole 750 and “has a generally cylindrical, hollow body portion 754 which tapers into a solid center point 756.” Col. 12:51-58; Figs. 34-35.

Larson also does not disclose, teach, or suggest the features of claim 40. Larson describes a unit dose vial 10 with a safety cap 22 having a cap portion 24 and a needle structure 34 including “a generally cylindrical body 36 provided with a small diameter downwardly tapering lower end extension 38,” which is sharpened at its lower end 40. Extension 38 defines a “stopper piercing needle for piercing the center portion 18 of the stopper or seal 14.” Col. 2:60-3:22; Figs. 2, 4. Further, “bulbous outer surface enlargement 66 of the needle defining extension 38 engages the central portion 18 of

the seal 14 in order to limit penetration of the needle defining extension 38 through the seal 14 whereby the central portion 18 is downwardly depressed to the position thereof illustrated in FIG. 6.” Col. 4:39-45; Fig. 6. Larson does not disclose, among other things, a piercing mandrel “further including a conical sealing portion adjoining the cylindrical portion and widening to the lid portion.”

Finally, Meyer describes a transfer device 11 having an elongate element 14 “in the form of a trocar consisting of a double needle and a sealing means 15.” Col. 3:39-41; Figs. 1-3. A review of the specification of Meyer reveals nothing disclosing the features as claimed in independent claim 40.

### **Conclusion**

In view of the foregoing reasons, Applicant respectfully requests reconsideration of this application, withdrawal of all of the outstanding rejections, and timely allowance of all pending claims.

The Office Action contains statements and characterizations regarding the claims and the related art. Applicant declines to subscribe automatically to any statement or characterization in the Office Action, regardless of whether it is addressed above.

Please grant any extensions of time required to enter this amendment and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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